


ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

#27 JUNE 14, 2011


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June 14, 2011

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

**APPROVAL OF AGREEMENT FOR ORGAN TRANSPLANT
PROCUREMENT SERVICES
(SECOND DISTRICT)
(3 VOTES)**

SUBJECT

Request approval of a replacement Agreement with the federally designated organ procurement organization, OneLegacy, Inc., with an open-ended term provision, for the continued provision of organ transplant procurement services at Harbor-UCLA Medical Center's Renal Transplant Center.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Authorize the Director of Health Services (Director), or his designee, to sign an open-ended, or "evergreen," term Agreement (Exhibit I) with the federally designated organ procurement organization (OPO), OneLegacy, Inc., to continue providing organ transplant procurement services at Harbor-UCLA Medical Center's (H-UCLA MC) Renal Transplant Center.
2. Delegate authority to the Director, or his designee, to execute amendments to the Agreement to incorporate any subsequent changes in federal and State laws and regulations; to align the Description of Services (DOS) to reflect these changes in the laws and regulations, if applicable; and to accept any subsequent adjusted amounts in the Organ Acquisition Fee (OAF), subject to review and approval of County Counsel, with notice to your Board and the Chief Executive Office.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Approval of the first recommendation authorizes the Director, or his designee, to sign a new Agreement with OneLegacy, Inc., the federally designated OPO that serves the County's hospitals, for the continued provision of cadaver kidneys for transplant in County patients at H-UCLA MC's Renal Transplant Center.

The Agreement will allow the Renal Transplant Center to continue to obtain organs needed to perform kidney transplants, which are necessary when acute and peritoneal dialysis, or other means of removing toxic or excessive waste products from a patient's blood, is not a feasible alternative. Additionally, performance of such kidney transplants allows H-UCLA MC Renal Transplant Center to retain its current status as a Centers for Medicare and Medicaid Services (CMS) federally certified transplant center.

The first recommendation also permits the term to be open-ended, or "evergreen," and will terminate only upon one of the following occurrences: (1) OneLegacy, Inc. is decertified by CMS; (2) another OPO is designated by CMS; (3) a waiver is granted to the County such that it is no longer subject to compliance with any federal or State regulations requiring the County to refer potential organ and tissue donors to any OPO; or (4) the County demonstrates that it is no longer subject to compliance with any federal or State regulations requiring that it refer potential organ and tissue donors to any OPO.

Approval of the second recommendation will allow the Director, or his designee, to update the Agreement to reflect modifications in federal and State laws and regulations; to align the DOS to reflect those changes, if necessary; and to accept newly adjusted OAFs as of the effective date as mandated by the fiscal intermediary, CMS.

H-UCLA MC Renal Transplant Center serves both community physician referrals and County hospital referrals. Current services are limited to kidney transplants only. In the future, services may expand to include other organ transplants based on the needs of County patients and availability of qualified County surgeons to perform these services. In such an event, the Department will return with an amendment to this Agreement.

Implementation of Strategic Plan Goals

The recommended action supports Goal 4, Health and Mental Health, of the County's Strategic Plan.

FISCAL IMPACT/FINANCING

Contract costs for organ transplant procurement services are estimated at \$1,138,250 for Fiscal Year (FY) 2011-12, partially offset by Medicare, Medi-Cal, and/or third-party payor reimbursement. The OAF for a single kidney is \$39,250. OAFs are established by CMS. Fees adjust based upon results of the CMS annual audits of organ providers.

Funding is included in the Department of Health Services FY 2011-12 Recommended Budget and will be requested in future fiscal years, as necessary.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The Honorable Board of Supervisors

6/14/2011

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In October 1999, CMS designated OneLegacy, Inc. as the sole organ transplant procurement organization in Southern California.

On June 19, 2001, your Board approved an Agreement with OneLegacy, Inc. to provide organ transplant procurement services through June 30, 2006.

On May 16, 2006, your Board approved a renewal Agreement (No. 702053) effective July 1, 2006 through June 30, 2011. The new Agreement replaces Agreement No. 702053.

County Counsel has reviewed and approved Exhibit I as to form.

CONTRACTING PROCESS

Not applicable.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

Approval of the recommended actions will ensure the continued and uninterrupted provision of organ transplant procurement services.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mitchell Katz". The signature is fluid and cursive, with the first name "Mitchell" written in a larger, more prominent script than the last name "Katz".

Mitchell H. Katz, M.D.

Director

MHK:adb

Enclosures

c: Chief Executive Office
County Counsel
Executive Office, Board of Supervisors

DEPARTMENT OF HEALTH SERVICES



AGREEMENT

BY AND BETWEEN

COUNTY OF LOS ANGELES

AND

ONELEGACY, INC.

FOR

ORGAN TRANSPLANT PROCUREMENT SERVICES

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STANDARD EXHIBIT(S)

A DESCRIPTION OF SERVICES

**AGREEMENT BY AND BETWEEN
COUNTY OF LOS ANGELES**

**AND
ONELEGACY, INC.**

**FOR
ORGAN TRANSPLANT PROCUREMENT SERVICES**

This Agreement made and entered into this ____ day of _____, 2011 by and between the County of Los Angeles, hereinafter referred to as County and OneLegacy, Inc., hereinafter referred to as Contractor or Organ Procurement Organization (OPO). OneLegacy, Inc. is located at 221 South Figueroa Street, Suite 500, Los Angeles, California 90012.

RECITALS

WHEREAS, pursuant to Sections 1441 and 1445 of the California Health and Safety Code, County has established and operates through its Department of Health Services (DHS) various hospitals, including Harbor-UCLA Medical Center, hereinafter referred to as Hospital or Transplant Hospital; and

WHEREAS, Hospital has one designated transplant center which has the personnel and capability of transplanting the organs listed in Attachment I, Organ Transplant Procurement List, to Exhibit A, Description of Services, of this Agreement in accordance with the requirements of federal regulations including 42 C.F.R. Section 482 subpart E et seq.; and

WHEREAS, pursuant to California Administrative Code, Title 22, Division 5, Chapter 1, Article 6, Section 70443, Hospital is required to provide directly, or by arrangement, organ transplantation; and

WHEREAS, OneLegacy, Inc. is federally designated by the Centers for Medicare & Medicaid Services (CMS) as the regional OPO for Southern California; and

WHEREAS, Contractor is equipped, staffed, and able to legally obtain organs for Hospital's transplant center use; and

WHEREAS, this Agreement is therefore authorized under California Code, Government Code Section 31000 which authorizes the Board of Supervisors to contract for Organ Transplant Procurement Services.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and for good and valuable consideration, the parties agree to the following:

1.0 TERM OF AGREEMENT

The term of this Agreement shall be open ended, "evergreen", and shall commence on July 1, 2011 and shall continue in full force and effect unless terminated by County upon the occurrence of at least one of the following circumstances:

- (A) Decertification of OneLegacy by the CMS as the designated organ procurement organization (OPO) for Southern California; or
- (B) Upon the effective date of the designation of another agency by the CMS to be the Transplant Hospital's designated OPO; or
- (C) Upon the effective date of a waiver granted to the Transplant Hospital by the CMS to work with another OPO; or

- (D) Upon a showing by Transplant Hospital that it no longer has a designated transplant center which have the personnel and the capability of transplanting organs.

Notwithstanding any other provision of this Paragraph, the failure of Contractor or its officers, employees, agents, or subcontractors to comply with any of the terms of this Agreement or any written directions by or on behalf of County issued pursuant hereto shall constitute a material breach hereto.

2.0 DESCRIPTION OF SERVICES

Contractor and Transplant Hospital shall provide services in the form as described in the body of this Agreement and Exhibit A, Description of Services (DOS), attached hereto and incorporated herein by reference, which specifies responsibilities for the receipt of organs by the Transplant Hospital and for the recovery and allocations of organs by the Contractor.

3.0 BILLING AND PAYMENT

- 3.1 County agrees to compensate Contractor in accordance with the Organ Acquisition fee(s) set forth in Exhibit A, DOS, Attachment I, Organ Transplant Procurement List attached hereto and incorporated herein by reference.

3.2 No Payment for Services Provided Following Expiration/Termination of Agreement

The Contractor shall have no claim against County for payment of any money or reimbursement, of any kind whatsoever, for any service provided by the Contractor after the termination of this Agreement. Should the Contractor receive any such payment it shall immediately notify County and shall immediately repay all such funds to County. Payment by County for services rendered

after termination of this Agreement shall not constitute a waiver of County's right to recover such payment from the Contractor. This provision shall survive the termination of this Agreement.

3.3 Invoices and Payments

The Contractor shall invoice the County only for providing the services and other work specified in Exhibit A, DOS, and elsewhere hereunder. The Contractor shall prepare invoices, which shall include the charges owed to the Contractor by the County under the terms of this Agreement. The Contractor's payments shall be as provided in Exhibit A, DOS, Attachment I, and the Contractor shall be paid only for the services and other work approved in writing by the County.

3.4 County Approval of Invoices

All invoices submitted by the Contractor shall be paid within forty-five (45) days after receipt of an invoice which is deemed to be complete and correct by Hospital's Expenditure Management Division and/or by the County's Auditor-Controller.

4.0 BACKGROUND AND SECURITY INVESTIGATIONS

4.1 All Contractor staff performing work under this Agreement may undergo and pass, to the satisfaction of County, a background investigation as a condition of beginning and continuing to work under this Agreement. County shall in its discretion, determine the method(s) of background clearance to be used, which may include but is not limited to fingerprinting. The fees associated with obtaining the background information shall be at the expense of the Contractor, regardless if the Contractor's staff passes or fails the background clearance investigation. County may

perform the background check and bill Contractor for the cost or deduct such amount from funds owed by County to Contractor.

- 4.2 County may request that the Contractor's staff be immediately removed from working on the County Agreement at any time during the term of this Agreement. County will not provide to the Contractor nor to the Contractor's staff any information obtained through the County conducted background clearance.
- 4.3 County may immediately, at the sole discretion of the County, deny or terminate facility access to the Contractor's staff that do not pass such investigation(s) to the satisfaction of the County or whose background or conduct is incompatible with County facility access.
- 4.4 Disqualification, if any, of the Contractor's staff, pursuant to this sub-paragraph 4.0, shall not relieve the Contractor of its obligation to complete all work in accordance with the terms and conditions of this Agreement.

5.0 Confidentiality

- 5.1 Contractor shall maintain the confidentiality of all records and information, including, but not limited to, billings, County records and patient records, in accordance with all applicable Federal, State and local laws, rules, regulations, ordinances, directives, guidelines, policies and procedures relating to confidentiality, including, without limitation, County policies concerning information technology security and the protection of confidential records and information.
- 5.2 Contractor shall indemnify, defend, and hold harmless County, its Special Districts, elected and appointed officers, employees, and agents, from and against any and all claims,

demands, damages, liabilities, losses, costs and expenses, administrative penalties and fines assessed including, without limitation, defense costs and legal, accounting and other expert, consulting, or professional fees, arising from, connected with, or related to any failure by Contractor, its officers, employees, agents, or subcontractors, to comply with this sub-paragraph 5.0, as determined by County in its sole judgment. Any legal defense pursuant to Contractor's indemnification obligations under this sub-paragraph 5.0 shall be conducted by Contractor and performed by counsel selected by Contractor and approved by County. Notwithstanding the preceding sentence, County shall have the right to participate in any such defense at its sole cost and expense, except that in the event Contractor fails to provide County with a full and adequate defense, as determined by County in its sole judgment, County shall be entitled to retain its own counsel, including, without limitation, County Counsel, and reimbursement from Contractor for all such costs and expenses incurred by County in doing so. Contractor shall not have the right to enter into any settlement, agree to any injunction, or make any admission, in each case, on behalf of County without County's prior written approval.

- 5.3 Contractor shall inform all of its officers, employees, agents and subcontractors providing services hereunder of the confidentiality and indemnification provisions of this Agreement.

6.0 Medical Health Screening

Contractor shall ensure that all of its staff providing services and/or entering a DHS Facility, under this Agreement at the time of participation hereunder, have undergone and successfully passed a

current physical health examination, consistent with current DHS policy.

7.0 Staff Performance under the Influence

Contractor shall not knowingly permit any employee to perform services under this Agreement while under the influence of any alcoholic beverage, medication, narcotic, or other substance which might impair their physical or mental performance.

8.0 STANDARD TERMS AND CONDITIONS

8.1 AMENDMENTS

8.1.1 For any change which affects the DOS, term, Agreement Sum, payments, or any term or condition included under this Agreement, an Amendment shall be prepared by the County and then executed by the Contractor and executed by the Director.

8.1.2 The County's Board of Supervisors or Chief Executive Officer or designee may require the addition and/or change of certain terms and conditions in the Agreement during the term of this Agreement. The County reserves the right to add and/or change such provisions as required by the County's Board of Supervisors or Chief Executive Officer. To implement such changes, an Amendment to the Agreement shall be prepared by the County and then executed by the Contractor and by the Director.

8.1.3 The Director may require, at his sole discretion, the addition and/or change of certain terms and conditions in the Agreement to conform to changes in federal or state law or regulation or County policy, during the term of this Agreement. The County reserves the unilateral right to add and/or change such provisions as required by law,

regulation or County policy, without the need for Contractor's written consent, to preserve this Agreement's conformity and compliance to federal and state law or regulation or County policy as deemed necessary by the County's Board of Supervisors, County Counsel or the Chief Executive Officer.

8.2 ASSIGNMENT AND DELEGATION

8.2.1 The Contractor shall not assign its rights or delegate its duties under this Agreement, or both, whether in whole or in part, without the prior written consent of County, in its discretion, and any attempted assignment or delegation without such consent shall be null and void. For purposes of this sub-paragraph, County consent shall require a written amendment to the Agreement, which is formally approved and executed by the parties. Any payments by the County to any approved delegate or assignee on any claim under this Agreement shall be deductible, at County's sole discretion, against the claims, which the Contractor may have against the County.

8.2.2 Shareholders, partners, members, or other equity holders of Contractor may transfer, sell, exchange, assign, or divest themselves of any interest they may have therein. However, in the event any such sale, transfer, exchange, assignment, or divestment is effected in such a way as to give majority control of Contractor to any person(s), corporation, partnership, or legal entity other than the majority controlling interest therein at the time of execution of the Agreement, such disposition is an assignment requiring the prior written consent of County in accordance with applicable provisions of this Agreement.

8.2.3 Any assumption, assignment, delegation, or takeover of any

of the Contractor's duties, responsibilities, obligations, or performance of same by any entity other than the Contractor, whether through assignment, subcontract, delegation, merger, buyout, or any other mechanism, with or without consideration for any reason whatsoever without County's express prior written approval, shall be a material breach of the Agreement which may result in the termination of this Agreement. In the event of such termination, County shall be entitled to pursue the same remedies against Contractor as it could pursue in the event of default by Contractor.

8.3 AUTHORIZATION WARRANTY

The Contractor represents and warrants that the person executing this Agreement for the Contractor is an authorized agent who has actual authority to bind the Contractor to each and every term, condition, and obligation of this Agreement and that all requirements of the Contractor have been fulfilled to provide such actual authority.

8.4 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS (45 C.F.R. PART 76)

Contractor hereby acknowledges that the County is prohibited from contracting with and making sub-awards to parties that are suspended, debarred, ineligible, or excluded or whose principals are suspended, debarred, ineligible, or excluded from securing federally funded contracts. By executing this Agreement, Contractor certifies that neither it nor any of its owners, officers, partners, or directors or other principals is currently suspended, debarred, ineligible, or excluded from securing federally funded contracts. Further, by executing this Agreement, Contractor certifies that, to its knowledge, none of its subcontractors, at any tier, or any owner, officer, partner, director, or other principal of any subcontractor is currently

suspended, debarred, ineligible, or excluded from securing federally funded contracts. Contractor shall immediately notify County in writing, during the term of this Agreement, should it or any of its subcontractors or any principals of either be suspended, debarred, ineligible, or excluded from securing federally funded contracts. Failure of Contractor to comply with this provision shall constitute a material breach of this Agreement upon which the County may immediately terminate or suspend this Agreement.

8.5 COMPLIANCE WITH APPLICABLE LAWS, RULES AND REGULATIONS

8.5.1 In the performance of this Agreement, Contractor shall comply with all current and applicable Federal, State and local laws, rules, regulations, ordinances, directives, guidelines, policies and procedures, including, but not limited to standards of The Joint Commission, its National Patient Safety Goals, California Code of Regulations, Title 22, Division 5 regulations and all other applicable industry best practices standards. All provisions required thereby to be included in this Agreement are incorporated herein by reference.

8.5.2 Contractor shall indemnify, defend, and hold harmless County, its officers, employees, and agents, from and against any and all claims, demands, damages, liabilities, losses, administrative penalties and fines assessed, costs, and expenses, including, without limitation, defense costs and legal, accounting and other expert, consulting or professional fees, arising from, connected with, or related to any failure by Contractor, its officers, employees, agents, or subcontractors, to comply with any such laws, rules, regulations, ordinances, directives, guidelines,

policies, or procedures, as determined by County in its sole judgment. Any legal defense pursuant to Contractor's indemnification obligations under this sub-paragraph 8.5 shall be conducted by Contractor and performed by counsel selected by Contractor and approved by County. Notwithstanding the preceding sentence, County shall have the right to participate in any such defense at its sole cost and expense, except that in the event Contractor fails to provide County with a full and adequate defense, as determined by County in its sole judgment, County shall be entitled to retain its own counsel, including, without limitation, County Counsel, and reimbursement from Contractor for all such costs and expenses incurred by County in doing so. Contractor shall not have the right to enter into any settlement, agree to any injunction or other equitable relief, or make any admission, in each case, on behalf of County without County's prior written approval.

8.6 COMPLIANCE WITH CIVIL RIGHTS LAWS- ANTI-DISCRIMINATION AND AFFIRMATIVE ACTION LAWS

8.6.1 The Contractor hereby assures that it will comply with Subchapter VI of the Civil Rights Act of 1964, 42 USC Sections 2000 (e) (1) through 2000 (e) (17); the Fair Employment & Housing Act, Government Code Section 12920-12922; and Affirmative Action in County Agreements, Chapter 4.32 of the Los Angeles County Code to the end that no person shall, on the grounds of race, color, religious creed, ancestry, national origin, sex, sexual orientation, age, physical or mental disability, medical condition, marital status, or political affiliation, be

excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement or under any project, program, or activity supported by this Agreement.

- 8.6.2 The Contractor certifies and agrees that all persons employed by it, its affiliates, subsidiaries, or holding companies are and shall be treated equally without regard to or because of race, color, religious creed, ancestry, national origin, sex, sexual orientation, age, physical or mental disability, medical condition, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations.
- 8.6.3 The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religious creed, ancestry, national origin, sex, sexual orientation, age, physical or mental disability, medical condition, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations. Such action shall include, but is not limited to: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- 8.6.4 The Contractor certifies and agrees that it will deal with its subcontractors, bidders, or vendors without regard to or because of race, color, religious creed, ancestry, national origin, sex, sexual orientation, age, physical or mental disability, medical condition, marital status, or political affiliation.

- 8.6.5 The Contractor certifies and agrees that it, its affiliates, subsidiaries, or holding companies shall comply with all applicable Federal and State laws and regulations to the end that no person shall, on the grounds of race, color, religious creed, ancestry, national origin, sex, sexual orientation, age, physical or mental disability, medical condition, marital status, or political affiliation, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement or under any project, program, or activity supported by this Agreement.
- 8.6.6 The Contractor shall allow County representatives access to the Contractor's employment records during regular business hours to verify compliance with the provisions of this sub-paragraph 8.6 when so requested by the County.
- 8.6.7 If the County finds that any provisions of this sub-paragraph 8.6 have been violated, such violation shall constitute a material breach of this Agreement upon which the County may terminate or suspend this Agreement. While the County reserves the right to determine independently that the anti-discrimination provisions of this Agreement have been violated, in addition, a determination by the California Fair Employment Practices Commission or the Federal Equal Employment Opportunity Commission that the Contractor has violated Federal or State anti-discrimination laws or regulations shall constitute a finding by the County that the Contractor has violated the anti-discrimination provisions of this Agreement.
- 8.6.8 The parties agree that in the event the Contractor violates any of the anti-discrimination provisions of this Agreement, the County shall, at its sole option, be entitled to the sum of

Five Hundred Dollars (\$500) for each such violation pursuant to California Civil Code Section 1671 as liquidated damages in lieu of terminating or suspending this Agreement.

8.6.9 Anti-discrimination in Services:

Contractor shall not discriminate in the provision of services hereunder because of race, color, religious creed, national origin, ethnic group identification, ancestry, age, sex, sexual orientation, medical condition, marital status, political affiliation, or physical or mental disability in accordance with requirements of Federal and State laws. For the purpose of this sub-paragraph, discrimination in the provision of services may include, but is not limited to, the following: Denying any person any service or benefit or the availability of a facility; providing any service or benefit to a person which is not equivalent or is provided in a non-equivalent manner or at a non-equivalent time, from that provided to others; subjecting any person to segregation or separate treatment in any manner related to the receipt of any service; restricting any person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit; and treating any person differently from others in determining admission, enrollment quota, eligibility, membership, or any other requirements or conditions which persons must meet in order to be provided any service or benefit. Contractor shall take affirmative action to ensure that intended beneficiaries of this Agreement are provided services without regard to race, color, religious creed, national origin, ethnic group identification, ancestry, sex, sexual orientation, age, medical

condition, marital status, political affiliation, physical or mental disability.

8.7 CONFLICT OF INTEREST

8.7.1 No County employee whose position with the County enables such employee to influence the administration of this Agreement or any contract, and no spouse or economic dependent of such employee, shall be employed in any capacity by the Contractor or have any other direct or indirect financial interest in this Agreement. No officer or employee of the Contractor who may financially benefit from the performance of work hereunder shall in any way participate in the County's approval, or ongoing evaluation, of such work, or in any way attempt to unlawfully influence the County's approval or ongoing evaluation of such work.

8.7.2 The Contractor shall comply with all conflict of interest laws, ordinances, and regulations now in effect or hereafter to be enacted during the term of this Agreement. The Contractor warrants that it is not now aware of any facts that create a conflict of interest. If the Contractor hereafter becomes aware of any facts that might reasonably be expected to create a conflict of interest, it shall immediately make full written disclosure of such facts to the County. Full written disclosure shall include, but is not limited to, identification of all persons implicated and a complete description of all relevant circumstances. Failure to comply with the provisions of this sub-paragraph shall be a material breach of this Agreement.

8.8 INTENTIONALLY OMITTED

8.9 CONTRACTOR'S ACKNOWLEDGEMENT OF COUNTY'S COMMITMENT TO THE SAFELY SURRENDERED BABY LAW

The Contractor acknowledges that the County places a high priority on the implementation of the Safely Surrendered Baby Law. The Contractor understands that it is the County's policy to encourage all County Contractors to voluntarily post the County's "Safely Surrendered Baby Law" poster in a prominent position at the Contractor's place of business. The Contractor will also encourage its subcontractors, if any, to post this poster in a prominent position in the subcontractor's place of business. The County's Department of Children and Family Services will supply the Contractor with the poster to be used. Information on how to receive the poster can be found on the Internet at www.babysafela.org.

8.10 COUNTY'S QUALITY ASSURANCE PLAN

The County or its agent will evaluate the Contractor's performance under this Agreement on not less than an annual basis. Such evaluation will include assessing the Contractor's compliance with all Agreement terms and conditions and performance standards identified in the DOS. Contractor deficiencies which the County determines are severe or continuing and that may place performance of the Agreement in jeopardy if not corrected will be reported to the Board of Supervisors.

The report will include improvement/corrective action measures taken by the County and the Contractor. If improvement does not occur consistent with the corrective action measures, the County may terminate this Agreement or impose other measures as specified in this Agreement.

8.11 DAMAGE TO COUNTY FACILITIES, BUILDINGS OR GROUNDS

- 8.11.1 The Contractor shall repair, or cause to be repaired, at its own cost, any and all damage to County facilities, buildings, or grounds caused by the Contractor or employees or agents of the Contractor. Such repairs shall be made immediately after the Contractor has become aware of such damage, but in no event later than thirty (30) days after the occurrence.
- 8.11.2 If the Contractor fails to make timely repairs, County may make any necessary repairs. All costs incurred by County, as determined by County, for such repairs shall be repaid by the Contractor by cash payment upon demand.
- 8.11.3 County reserves the unilateral right to make any repairs which Director determines, in his sole discretion, to be a public safety issue requiring immediate repair. County will bill Contractor for the cost of said repair or deduct said cost from any outstanding amounts owed by County to Contractor.

8.12 EMPLOYMENT ELIGIBILITY VERIFICATION

- 8.12.1 The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Agreement meet the citizenship or alien status requirements set forth in Federal and State statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal and State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, (P.L. 99-603), or as they currently exist and as they may be hereafter amended.

The Contractor shall retain all such documentation for all covered employees for the period prescribed by law.

8.12.2 The Contractor shall indemnify, defend, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Agreement.

8.13 FACSIMILE REPRESENTATIONS

The County and the Contractor hereby agree to regard facsimile representations of original signatures of authorized officers of each party, when appearing in appropriate places on the Amendments prepared pursuant to sub-paragraph 8.1, and received via communications facilities, as legally sufficient evidence that such original signatures have been affixed to Amendments to this Agreement, such that the parties need not follow up facsimile transmissions of such documents with subsequent (non-facsimile) transmission of "original" versions of such documents.

8.14 FAIR LABOR STANDARDS

The Contractor shall comply with all applicable provisions of the Federal Fair Labor Standards Act and shall indemnify, defend, and hold harmless the County and its agents, officers, and employees from any and all liability, including, but not limited to, wages, overtime pay, liquidated damages, penalties, court costs, and attorneys' fees arising under any wage and hour law, including, but not limited to, the Federal Fair Labor Standards Act, for work performed by the Contractor's employees for which the County may be found jointly or solely liable.

8.15 FEDERAL ACCESS TO RECORDS

If, and to the extent that, Section 1861(v)(1)(I) of the Social Security Act (42 U.S.C. Section 1395x(v)(1)(I)) is applicable, Contractor agrees that for a period of five (5) years following the furnishing of services under this Agreement, Contractor shall maintain and make available, upon written request, to the Secretary of the United States Department of Health and Human Services or the Controller General of the United States, or to any of their authorized representatives, the Agreements, books, documents and records of Contractor which are necessary to verify the nature and extent of the costs of services provided hereunder. Furthermore, if Contractor carries out any of the services provided hereunder through any subcontract with a value or cost of Ten Thousand Dollars (\$10,000) or more over a twelve (12) month period with a related organization (as that term is defined under Federal law), Contractor agrees that each such subcontract shall provide for such access to the subcontract, books, documents and records of the subcontractor.

8.16 GOVERNING LAW, JURISDICTION, AND VENUE

This Agreement shall be governed by, and construed in accordance with, the laws of the State of California. The Contractor agrees and consents to the exclusive jurisdiction of the courts of the State of California for all purposes regarding this Agreement and further agrees and consents that venue of any action brought hereunder shall be exclusively in the County of Los Angeles.

8.17 HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (HIPAA) AND THE HEALTH INFORMATION TECHNOLOGY FOR ECONOMIC AND CLINICAL HEALTH ACT (HITECH)

- 8.17.1 The parties acknowledge the existence of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health Act (HITECH) and their implementing regulations. Contractor understands and agrees that, as a provider of medical treatment services, it is a “covered entity” under HIPAA/HITECH and, as such, has obligations with respect to the confidentiality, privacy, and security of patients’ medical information , and must take certain steps to preserve the confidentiality of this information, both internally and externally, including the training of its staff and the establishment of proper procedures for the release of such information, including the use of appropriate consents and authorizations specified under HIPAA/HITECH.
- 8.17.2 The parties acknowledge their separate and independent obligations with respect to HIPAA/HITECH, and that such obligations relate to transactions and code sets, privacy, and security. Contractor understands and agrees that it is separately and independently responsible for compliance with HIPAA/HITECH in all these areas and that County has not undertaken any responsibility for compliance on Contractor’s behalf. Contractor has not relied, and will not in any way rely, on County for legal advice or other representations with respect to Contractor’s obligations under HIPAA/HITECH, but will independently seek its own counsel and take the necessary measures to comply with the law and its implementing regulations.
- 8.17.3 Contractor and County understand and agree that each is independently responsible for HIPAA/HITECH compliance and agree to take all necessary and reasonable actions to comply with the requirements of the HIPAA/HITECH laws

and implementing regulations related to transactions and code sets, privacy, and security.

- 8.17.4 Each party further agrees that, should it fail to comply with its obligations under HIPAA/HITECH, it shall indemnify and hold harmless the other party (including the other party's officers, employees, and agents), for damages to the other party that are attributable to such failure.

8.18 INDEPENDENT CONTRACTOR STATUS

- 8.18.1 This Agreement is by and between the County and the Contractor and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between the County and the Contractor. The employees and agents of one party shall not be, or be construed to be, the employees or agents of the other party for any purpose whatsoever.
- 8.18.2 The Contractor shall be solely liable and responsible for providing to, or on behalf of, all persons performing work pursuant to this Agreement all compensation and benefits. The County shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, Federal, State, or local taxes, or other compensation, benefits, or taxes for any personnel provided by or on behalf of the Contractor.
- 8.18.3 The Contractor understands and agrees that all persons performing work pursuant to this Agreement are, for purposes of Workers' Compensation liability, solely employees of the Contractor and not employees of the County. The Contractor shall be solely liable and responsible for furnishing any and all Workers' Compensation benefits to any person as a result of any

injuries arising from or connected with any work performed by or on behalf of the Contractor pursuant to this Agreement.

8.18.4 The Contractor shall adhere to the provisions stated in subparagraph 5.0 - Confidentiality.

8.19 INDEMNIFICATION

The Contractor shall indemnify, defend and hold harmless the County, its Special Districts, elected and appointed officers, employees, and agents from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), arising from or connected with the Contractor's acts and/or omissions arising from and/or relating to this Agreement.

8.20 GENERAL PROVISIONS FOR ALL INSURANCE COVERAGE

Without limiting Contractor's indemnification of County, and in the performance of this Agreement and until all of its obligations pursuant to this Agreement have been met, Contractor shall provide and maintain at its own expense insurance coverage satisfying the requirements specified in Sections 8.20 and 8.21 of this Agreement. These minimum insurance coverage terms, types and limits (the "Required Insurance") also are in addition to and separate from any other Contractual obligation imposed upon Contractor pursuant to this Agreement. The County in no way warrants that the Required Insurance is sufficient to protect the Contractor for liabilities which may arise from or relate to this Agreement.

8.20.1 Evidence of Coverage and Notice to County

- Certificate(s) of insurance coverage (Certificate) satisfactory to County, and a copy of an Additional Insured endorsement confirming County and its Agents (defined below) has been given Insured

status under the Contractor's General Liability policy, shall be delivered to County at the address shown below and provided prior to commencing services under this Agreement.

- Renewal Certificates shall be provided to County not less than 10 days prior to Contractor's policy expiration dates. The County reserves the right to obtain complete, certified copies of any required Contractor and/or Sub-Contractor insurance policies at any time.
- Certificates shall identify all Required Insurance coverage types and limits specified herein, reference this Agreement by name or number, and be signed by an authorized representative of the insurer(s). The Insured party named on the Certificate shall match the name of the Contractor identified as the contracting party in this Agreement. Certificates shall provide the full name of each insurer providing coverage, its NAIC (National Association of Insurance Commissioners) identification number, its financial rating, the amounts of any policy deductibles or self-insured retentions exceeding fifty thousand (\$50,000.00) dollars, and list any County required endorsement forms.
- Neither the County's failure to obtain, nor the County's receipt of, or failure to object to a non-complying insurance certificate or endorsement, or any other insurance documentation or information provided by the Contractor, its insurance broker(s)

and/or insurer(s), shall be construed as a waiver of any of the Required Insurance provisions.

Certificates and copies of any required endorsements shall be sent to:

County of Los Angeles
Department of Health Services
Contracts and Grants Division
313 N. Figueroa Street, 6E,
Los Angeles, CA 90012
Attention: Kathy K. Hanks, C.P.M.
Director, Contract Administration & Monitoring

And

County of Los Angeles
Centralized Contract Monitoring Division
5555 Ferguson Drive, Suite 210
Commerce CA 90022
Attention: Loretta Range, Director
Centralized Contract Monitoring Division

Contractor also shall promptly report to County any injury or property damage accident or incident, including any injury to a Contractor employee occurring on County property, and any loss, disappearance, destruction, misuse, or theft of County property, monies or securities entrusted to Contractor. Contractor also shall promptly notify County of any third party claim or suit filed against Contractor or any of its Sub-Contractors which arises from or relates to this Agreement, and could result in the filing of a claim or lawsuit against Contractor and/or County.

8.20.2 Additional Insured Status and Scope of Coverage

The County of Los Angeles, its Special Districts, Elected Officials, Officers, Agents, Employees and Volunteers (collectively County and its Agents) shall be provided additional insured status under Contractor's General

Liability policy with respect to liability arising out of Contractor's ongoing and completed operations performed on behalf of the County. County and its Agents additional insured status shall apply with respect to liability and defense of suits arising out of the Contractor's acts or omissions, whether such liability is attributable to the Contractor or to the County. The full policy limits and scope of protection also shall apply to the County and its Agents as an additional insured, even if they exceed the County's minimum Required Insurance specifications herein. Use of an automatic additional insured endorsement form is acceptable providing it satisfies the Required Insurance provisions herein.

8.20.3 Cancellation of Insurance

Except in the case of cancellation for non-payment of premium, Contractor's insurance policies shall provide, and Certificates shall specify, that County shall receive not less than thirty (30) days advance written notice by mail of any cancellation of the Required Insurance. Ten (10) days prior notice may be given to County in event of cancellation for non-payment of premium.

8.20.4 Failure to Maintain Insurance

Contractor's failure to maintain or to provide acceptable evidence that it maintains the Required Insurance shall constitute a material breach of the Agreement, upon which County immediately may withhold payments due to Contractor, and/or suspend or terminate this Agreement. County, at its sole discretion, may obtain damages from Contractor resulting from said breach.

8.20.5 Insurer Financial Ratings

Coverage shall be placed with insurers acceptable to the County with A.M. Best ratings of not less than A:VII unless otherwise approved by County.

8.20.6 Contractor's Insurance Shall Be Primary

Contractor's insurance policies, with respect to any claims related to this Agreement, shall be primary with respect to all other sources of coverage available to Contractor. Any County maintained insurance or self-insurance coverage shall be in excess of and not contribute to any Contractor coverage.

8.20.7 Waivers of Subrogation

To the fullest extent permitted by law, the Contractor hereby waives its rights and its insurer(s)' rights of recovery against County under all the Required Insurance for any loss arising from or relating to this Agreement. The Contractor shall require its insurers to execute any waiver of subrogation endorsements which may be necessary to effect such waiver.

8.20.8 Sub-Contractor Insurance Coverage Requirements

Contractor shall include all Sub-Contractors as insureds under Contractor's own policies, or shall provide County with each Sub-Contractor's separate evidence of insurance coverage. Contractor shall be responsible for verifying each Sub-Contractor complies with the Required Insurance provisions herein, and shall require that each Sub-Contractor name the County and Contractor as additional insureds on the Sub-Contractor's General Liability policy. Contractor shall obtain County's prior review and approval of any Sub-Contractor request for modification of the Required Insurance.

8.20.9 Deductibles and Self-Insured Retentions (SIRs)

Contractor's policies shall not obligate the County to pay any portion of any Contractor deductible or SIR. The County retains the right to require Contractor to reduce or eliminate policy deductibles and SIRs as respects the County, or to provide a bond guaranteeing Contractor's payment of all deductibles and SIRs, including all related claims investigation, administration and defense expenses. Such bond shall be executed by a corporate surety licensed to transact business in the State of California.

8.20.10 Claims Made Coverage

If any part of the Required Insurance is written on a claims made basis, any policy retroactive date shall precede the effective date of this Agreement. Contractor understands and agrees it shall maintain such coverage for a period of not less than three (3) years following Agreement expiration, termination or cancellation.

8.20.11 Application of Excess Liability Coverage

Contractors may use a combination of primary, and excess insurance policies which provide coverage as broad as ("follow form" over) the underlying primary policies, to satisfy the Required Insurance provisions.

8.20.12 Separation of Insureds

All liability policies shall provide cross-liability coverage as would be afforded by the standard ISO (Insurance Services Office, Inc.) separation of insureds provision with no insured versus insured exclusions or limitations.

8.20.13 Alternative Risk Financing Programs

The County reserves the right to review, and then approve, Contractor use of self-insurance, risk retention groups, risk purchasing groups, pooling arrangements and captive

insurance to satisfy the Required Insurance provisions. The County and its Agents shall be designated as an Additional Covered Party under any approved program.

8.20.14 County Review and Approval of Insurance Requirements

The County reserves the right to review and adjust the Required Insurance provisions, conditioned upon County's determination of changes in risk exposures.

8.21 INSURANCE COVERAGE

8.21.1 Commercial General Liability insurance (providing scope of coverage equivalent to ISO policy form CG 00 01), naming County and its Agents as an additional insured, with limits of not less than:

General Aggregate:	\$2 million
Products/Completed Operations Aggregate:	\$1 million
Personal and Advertising Injury:	\$1 million
Each Occurrence:	\$1 million

8.21.2 Automobile Liability insurance (providing scope of coverage equivalent to ISO policy form CA 00 01) with limits of not less than \$1 million for bodily injury and property damage, in combined or equivalent split limits, for each single accident. Insurance shall cover liability arising out of Contractor's use of autos pursuant to this Agreement, including owned, leased, hired, and/or non-owned autos, as each may be applicable.

8.21.3 Workers Compensation and Employers' Liability insurance or qualified self-insurance satisfying statutory requirements, which includes Employers' Liability coverage with limits of not less than \$1 million per accident. If Contractor will provide leased employees, or, is an

employee leasing or temporary staffing firm or a professional employer organization (PEO), coverage also shall include an Alternate Employer Endorsement (providing scope of coverage equivalent to ISO policy form WC 00 03 01 A) naming the County as the Alternate Employer, and the endorsement form shall be modified to provide that County will receive not less than thirty (30) days advance written notice of cancellation of this coverage provision. If applicable to Contractor's operations, coverage also shall be arranged to satisfy the requirements of any federal workers or workmen's compensation law or any federal occupational disease law.

8.21.4 Unique Insurance Coverage

- **Professional Liability/Errors and Omissions**

Insurance covering Contractor's liability arising from or related to this Agreement, with limits of not less than \$1 million per claim and \$2 million aggregate. Further, Contractor understands and agrees it shall maintain such coverage for a period of not less than three (3) years following this Agreement's expiration, termination or cancellation.

8.22 LICENSES, PERMITS, REGISTRATIONS, ACCREDITATIONS, AND CERTIFICATES

Contractor shall obtain and maintain in effect during the term of this Agreement, all valid licenses, permits, registrations, accreditations, and certificates required by law which are applicable to its performance of this Agreement, and shall ensure that all of its

officers, employees, and agents who perform services hereunder obtain and maintain in effect during the term of this Agreement, all licenses, permits, registrations, accreditations, and certificates required by law which are applicable to their performance of services hereunder. All such licenses, permits, registrations, accreditations, and certifications relating to services hereunder shall be made available to County upon request.

8.23 NOTICE OF DELAYS

Except as otherwise provided under this Agreement, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Agreement, that party shall, within one (1) business day, give notice thereof, including all relevant information with respect thereto, to the other party.

8.24 NOTICE TO EMPLOYEES REGARDING THE FEDERAL EARNED INCOME CREDIT

The Contractor shall notify its employees, and shall require each subcontractor to notify its employees, that they may be eligible for the Federal Earned Income Credit under the federal income tax laws. Such notice shall be provided in accordance with the requirements set forth in Internal Revenue Service Notice No. 1015.

8.25 NOTICE TO EMPLOYEES REGARDING THE SAFELY SURRENDERED BABY LAW

The Contractor shall notify and provide to its employees, and shall require each subcontractor to notify and provide to its employees, a fact sheet regarding the Safely Surrendered Baby Law, its implementation in Los Angeles County, and where and how to safely surrender a baby. The fact sheet is available on the Internet at www.babysafela.org for printing purposes.

8.26 INTENTIONALLY OMITTED

8.27 PUBLIC RECORDS ACT

- 8.27.1 Any documents submitted by the Contractor; all information obtained in connection with the County's right to audit and inspect the Contractor's documents, books, and accounting records pursuant to sub-paragraph 8.29 - Record Retention and Inspection/Audit Settlement of this Agreement; as well as any documents that may have been submitted in response to a solicitation process for this Agreement, become the exclusive property of the County. All such documents become a matter of public record and shall be regarded as public records. Exceptions will be those elements in the California Government Code Section 6250 et seq. (Public Records Act) and which are marked "trade secret", "confidential", or "proprietary". The County shall not in any way be liable or responsible for the disclosure of any such records including, without limitation, those so marked, if disclosure is required by law, or by an order issued by a court of competent jurisdiction.
- 8.27.2 In the event the County is required to defend an action on a Public Records Act request for any of the aforementioned documents, information, books, records, and/or contents of a proposal marked "trade secret", "confidential", or "proprietary", the Contractor agrees to defend and indemnify the County from all costs and expenses, including reasonable attorney's fees, in action or liability arising under the Public Records Act.

8.28 PUBLICITY

- 8.28.1 The Contractor shall not disclose any details in connection with this Agreement to any person or entity except as may be otherwise provided hereunder or required by law.

However, in recognizing the Contractor's need to identify its services and related clients to sustain itself, the County shall not inhibit the Contractor from publishing its role under this Agreement within the following conditions:

- The Contractor shall develop all publicity material in a professional manner; and
- During the term of this Agreement, the Contractor shall not, and shall not authorize another to, publish or disseminate any commercial advertisements, press releases, feature articles, or other materials using the name of the County without the prior written consent of the County. The County shall not unreasonably withhold written consent.

8.29 RECORD RETENTION AND INSPECTION/AUDIT SETTLEMENT

8.29.1 The Contractor shall maintain, and provide upon request by County, accurate and complete financial records of its activities and operations relating to this Agreement in accordance with generally accepted accounting principles. The Contractor shall also maintain accurate and complete employment and other records relating to its performance of this Agreement.

8.29.2 The Contractor agrees that the County, or its authorized representatives, shall have access to and the right to examine, audit, excerpt, copy, or transcribe any pertinent transaction, activity, or record relating to this Agreement. All such material, including, but not limited to, all financial records, bank statements, cancelled checks or other proof of payment, timecards, sign-in/sign-out sheets and other time and employment records, and proprietary data and information, shall be kept and maintained by the Contractor

and shall be made available to the County during the term of this Agreement and for a period of five (5) years thereafter unless the County's written permission is given to dispose of any such material prior to such time. All such material shall be maintained by the Contractor at a location in Los Angeles County, provided that if any such material is located outside Los Angeles County, then, at the County's option, the Contractor shall pay the County for travel, per diem, and other costs incurred by the County to examine, audit, excerpt, copy, or transcribe such material at such other location.

- 8.29.3 In the event that an audit of the Contractor is conducted specifically regarding this Agreement by any Federal or State auditor, or by any auditor or accountant employed by the Contractor or otherwise, including audits conducted by the Medicare and Medi-Cal programs, or both, then the Contractor shall file a copy of each such audit report, including Statement of Auditing Standards No. 70 Type 2 Reports, with the County's Auditor-Controller within thirty (30) days of the Contractor's receipt thereof, unless otherwise provided by applicable Federal or State law or under this Agreement. Subject to applicable law, the County shall make a reasonable effort to maintain the confidentiality of such audit report(s).
- 8.29.4 Failure on the part of the Contractor to comply with any of the provisions of this sub-paragraph 8.29 shall constitute a material breach of this Agreement upon which the County may terminate or suspend this Agreement.
- 8.29.5 If, at any time during the term of this Agreement or within five (5) years after the expiration or termination of this Agreement, representatives of the County conduct an audit

of the Contractor regarding the work performed under this Agreement, and if such audit finds that the County's dollar liability for any such work is less than payments made by the County to the Contractor, then the difference shall be either: a) repaid by the Contractor to the County by cash payment upon demand or b) at the sole option of the County's Auditor-Controller, deducted from any amounts due to the Contractor from the County, whether under this Agreement or otherwise. If such audit finds that the County's dollar liability for such work is more than the payments made by the County to the Contractor, then the difference shall be paid to the Contractor by the County by cash payment, provided that in no event shall the County's maximum obligation for this Agreement exceed the funds appropriated by the County for the purpose of this Agreement.

8.29.7 Knox-Keene Health Care Services Requirements

If Contractor provides medical services hereunder at its private offices, Contractor shall further maintain all applicable books, documents, and records regarding services rendered to subscribers or enrollees of the Los Angeles County Community Health Plan for a period of five (5) years following the expiration or earlier termination of this Agreement. This obligation shall not be terminated upon expiration or termination of this Agreement.

Director shall have the right to inspect, at reasonable times upon demand during the term of this Agreement and for five (5) years thereafter, Contractor's books, records, and papers relating to: (1) the provisions of health services at Contractor's office to subscribers or enrollees of the Los Angeles County Community Health Plan, (2) the costs

thereof, (3) co-payments received by Contractor from subscribers of enrollees and, (4) the financial condition of Contractor.

Contractor shall maintain such records and provide such information to the Commissioner of Corporations as may be necessary for compliance with the provisions of the Knox-Keene Health Care Service Plan Act of 1975 (California Health and Safety Code sections 1340, et seq.) and all rules and regulations adopted pursuant thereto.

8.29.8 Audit/Compliance Review

In the event County representatives conduct an audit/compliance review of Contractor, Contractor shall fully cooperate with County's representatives. Contractor shall allow County representatives access to all financial reports, medical records, and reports pertaining to this Agreement and shall allow photocopies to be made of these documents utilizing Contractor's photocopier, for which County shall reimburse Contractor its customary charge for record copying services, if requested. Director shall provide Contractor with at least ten (10) working days prior written notice of any audit/compliance review.

County may conduct a statistical audit/compliance review of all claims paid by County during a specified period. The sample shall be determined in accordance with generally accepted auditing standards. An exit conference shall be held following the performance of any such audit/compliance review at which time the results shall be discussed with Contractor. Contractor shall be provided with a copy of any resultant written evaluation report(s).

Contractor shall have the opportunity to review County's findings for Contractor, and Contractor shall have thirty (30)

calendar days after receipt of County's audit/compliance review results to provide documentation to the County representatives to resolve audit exceptions. If, at the end of the thirty (30) day period there remain audit exceptions which have not been resolved to the satisfaction of County's representatives, then the exception rate found in the audit or sample results shall be applied to the total County payments made to Contractor for all claims paid during the audit/compliance review period to determine Contractor's liability to County.

8.30 SUBCONTRACTING

- 8.30.1 The requirements of this Agreement may not be subcontracted by the Contractor **without the advance approval of the County**. Any attempt by the Contractor to subcontract without the prior consent of the County may be deemed a material breach of this Agreement.
- 8.30.2 If the Contractor desires to subcontract, the Contractor shall provide the following information promptly at the County's request:
- A description of the work to be performed by the subcontractor;
 - A draft copy of the proposed subcontract; and
 - Other pertinent information and/or certifications requested by the County.
- 8.30.3 The Contractor shall indemnify and hold the County harmless with respect to the activities of each and every subcontractor in the same manner and to the same degree as if such subcontractor(s) were the Contractor employees.
- 8.30.4 The Contractor shall remain fully responsible for all performances required of it under this Agreement, including

those that the Contractor has determined to subcontract, notwithstanding the County's approval of the Contractor's proposed subcontract.

- 8.30.5 The County's consent to subcontract shall not waive the County's right to prior and continuing approval of any and all personnel, including subcontractor employees, providing services under this Agreement. The Contractor is responsible to notify its subcontractors of this County right.
- 8.30.6 The Director or his designee is authorized to act for and on behalf of the County with respect to approval of any subcontract and subcontractor employees. After approval of the subcontract by the County, Contractor shall forward a fully executed subcontract to the County for their files.
- 8.30.7 The Contractor shall be solely liable and responsible for all payments or other compensation to all subcontractors and their officers, employees, agents, and successors in interest arising through services performed hereunder, notwithstanding the County's consent to subcontract.
- 8.30.8 The Contractor shall obtain certificates of insurance, which establish that the subcontractor maintains all the programs of insurance required by the County from each approved subcontractor. The Contractor shall ensure delivery of all such documents to:

County of Los Angeles
Department of Health Services
Contracts and Grants Division
313 N. Figueroa Street – 6E
Los Angeles, CA 90012
Attention: Kathy K. Hanks, C.P.M.
Director, Contract Administration & Monitoring

before any subcontractor employee may perform any work hereunder.

8.31 TERMINATION FOR DEFAULT

8.31.1 The County may, by written notice to the Contractor, terminate the whole or any part of this Agreement if, in the judgment of the Director, or his designee:

- Contractor has materially breached this Agreement; or
- Contractor fails to timely provide and/or satisfactorily perform services required either under this Agreement; or
- Contractor fails to demonstrate a high probability of timely fulfillment of performance requirements under this Agreement, or of any obligations of this Agreement and in either case, fails to demonstrate convincing progress toward a cure within five (5) working days (or such longer period as the County may authorize in writing) after receipt of written notice from the County specifying such failure.

8.31.2 INTENTIONALLY OMITTED

8.31.3 Except with respect to defaults of any subcontractor, the Contractor shall not be liable for any costs if its failure to perform this Agreement arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not limited to: acts of God or of the public enemy, acts of the County in either its sovereign or Contractual capacity, acts of Federal or State governments in their sovereign capacities, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a

subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any such excess costs for failure to perform, unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required performance schedule. As used in this subparagraph, the term "subcontractor(s)" means subcontractor(s) at any tier.

8.31.4 INTENTIONALLY OMITTED

8.31.5 The rights and remedies of the County provided in this subparagraph 8.31 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

8.32 TERMINATION FOR IMPROPER CONSIDERATION

8.32.1 The County may, by written notice to the Contractor, immediately terminate the right of the Contractor to proceed under this Agreement if it is found that consideration, in any form, was offered or given by the Contractor, either directly or through an intermediary, to any County officer, employee, or agent with the intent of securing this Agreement or securing favorable treatment with respect to the award, amendment, or extension of this Agreement or the making of any determinations with respect to the Contractor's performance pursuant to this Agreement. In the event of such termination, the County shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of default by the Contractor.

8.32.2 The Contractor shall immediately report any attempt by a County officer or employee to solicit such improper

consideration. The report shall be made either to the County manager charged with the supervision of the employee or to the County Auditor-Controller's Employee Fraud Hotline at (800) 544-6861.

8.32.3 Among other items, such improper consideration may take the form of cash, discounts, service, the provision of travel or entertainment, or tangible gifts.

8.33 TERMINATION FOR INSOLVENCY

8.33.1 The County may terminate this Agreement forthwith in the event of the occurrence of any of the following:

- Insolvency of the Contractor. The Contractor shall be deemed to be insolvent if it has ceased to pay its debts for at least sixty (60) days in the ordinary course of business or cannot pay its debts as they become due, whether or not a petition has been filed under the Federal Bankruptcy Code and whether or not the Contractor is insolvent within the meaning of the Federal Bankruptcy Code;
- The filing of a voluntary or involuntary petition regarding the Contractor under the Federal Bankruptcy Code;
- The appointment of a Receiver or Trustee for the Contractor; or
- The execution by the Contractor of a general assignment for the benefit of creditors.

8.33.2 The rights and remedies of the County provided in this subparagraph 8.33 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

8.34 TERMINATION FOR NON-APPROPRIATION OF FUNDS

Notwithstanding any other provision of this Agreement, the County shall not be obligated for the Contractor's performance hereunder or

by any provision of this Agreement during any of the County's future fiscal years unless and until the County's Board of Supervisors appropriates funds for this Agreement in the County's Budget for each such future fiscal year. In the event that funds are not appropriated for this Agreement, then this Agreement shall terminate as of June 30 of the last fiscal year for which funds were appropriated. The County shall notify the Contractor in writing of any such non-allocation of funds at the earliest possible date.

8.35 UNLAWFUL SOLICITATION

Contractor shall inform all of its officers and employees performing services hereunder of the provisions of Article 9 of Chapter 4 of Division 3 (commencing with section 6150) of Business and Professions Code of the State of California (i.e. State Bar Act provisions regarding unlawful solicitation as a runner or capper for attorneys) and shall take positive and affirmative steps in its performance hereunder to ensure that there is no violation of said provisions by its officers and employees. Contractor agrees that if a patient requests assistance in obtaining the services of any attorney, it will refer the patient to the attorney referral service of all those bar associations within Los Angeles County that have such a service.

8.36 VALIDITY

If any provision of this Agreement or the application thereof to any person or circumstance is held invalid, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby.

8.37 WAIVER

No waiver by the County of any breach of any provision of this Agreement shall constitute a waiver of any other breach or of such provision. Failure of the County to enforce at any time, or from time to time, any provision of this Agreement shall not be construed as a waiver thereof. The rights and remedies set forth in this sub-

paragraph 8.37 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

8.38 NO INTENT TO CREATE A THIRD PARTY BENEFICIARY CONTRACT

Notwithstanding any other provision of this Agreement, the parties do not in any way intend that any person shall acquire any rights as a third party beneficiary of this Agreement.

8.39 REPORTING OF CHILD/ELDER AND DEPENDENT ADULT ABUSE

8.39.1 Contractor staff working on this Agreement shall comply with California Penal Code (hereinafter "PC") Section 11164 et seq. and shall report all known and suspected instances of child abuse to an appropriate child protective agency, as mandated by these code sections. Child abuse reports shall be made by telephone to the Department of Children and Family Services hotline at (800) 540-4000 within three (3) business days and shall submit all required information, in accordance with the PC Sections 11166 and 11167.

8.39.2 Contractor staff working on this Agreement shall comply with California Welfare and Institutions Code (WIC), Section 15600 et seq. and shall report all known or suspected instances of physical abuse of elders and dependent adults either to an appropriate County adult protective services agency or to a local law enforcement agency, as mandated by these code sections. The Contractor staff working on this Agreement shall make the report on such abuse, and shall submit all required information, in accordance with the WIC Sections 15630, 15633 and 15633.5.

8.39.3 Contractor staff's failure to report as required is considered a breach of this Agreement subject to a misdemeanor, punishable by up to one year in jail, a fine of up to \$5,000 or both.

8.40 NOTICES

8.40.1 All notices or demands required or permitted to be given or made under this Agreement shall be in writing and shall be hand delivered with signed receipt or mailed by first-class registered or certified mail, postage prepaid, addressed to the parties as identified below:

Notices to County shall be addressed as follows:

(1) Harbor-UCLA Medical Center- Administration
1000 West Carson Street
Torrance, California 90509
Attention: Calvin Kwan,
Chief Operations Officer
Email: ckwan@dhs.lacounty.gov

(2) Department of Health Services
Contracts and Grants Division
313 North Figueroa Street, 6th Floor East
Los Angeles, California 90012
Attention: Kathy Hanks, Director
Contract Administration & Monitoring
Email: khanks@dhs.lacounty.gov

Addresses may be changed by either party giving ten (10) days' prior written notice thereof to the other party.

Notices to Contractor shall be addressed as follows:

OneLegacy, Inc.

221 South Figueroa Street, Suite 500

Los Angeles, California 90012

Attention: Thomas Mone, Chief Executive Officer

Email: tmone@onelegacy.org

8.40.2 **Electronic Notice:** In addition, and in lieu of written notification, the Director, or his designee, shall have the authority to issue any notice to Contractor electronically via e-mail at the designated email addresses indicated in 8.40.1 above. This includes all notices or demands required or permitted by the County under this Agreement.

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IN WITNESS WHEREOF, Contractor has executed this Agreement, or caused it to be duly executed and the County of Los Angeles, by order of its Board of Supervisors has caused this Agreement to be executed on its behalf by the Mayor of said Board and attested by the Executive Officer-Clerk of the Board of Supervisors thereof, the day and year first above written.

CONTRACTOR:

By _____
Name

Title

COUNTY OF LOS ANGELES

By _____
Mayor, Board of Supervisors

APPROVED AS TO FORM:
Andrea Ordin, County Counsel

ADB:adb

DESCRIPTION OF SERVICES

ORGAN TRANSPLANT PROCUREMENT SERVICES AGREEMENT

1. RESPONSIBILITY FOR DECLARATION OF BRAIN DEATH:

In any case where Contractor contacts the Transplant Hospital and offers it the opportunity to participate in a particular donation, Contractor and the Transplant Hospital acknowledge their mutual understanding that neither of them will have any responsibility with respect to the declaration of brain death of the donor, except in cases where the donor resides at the Transplant Hospital wherein the Transplant Hospital has responsibility because the declaration of brain death is made by a physician or surgeon on the staff or otherwise affiliated with the Transplant Hospital. In the typical case such declarations shall be made by the physician or surgeon who attends the donor at the time of death or, if none, by a physician or a surgeon on the staff of the hospital where the donor dies. The parties acknowledge their understanding that the physician or surgeon who makes the brain death determination cannot participate in the procedures for removing or transplanting organs.

2. CONTRACTOR PERSONNEL REQUIREMENTS:

Contractor shall provide organ transplant procurement services on a twenty-four (24) hour, seven (7) days a week basis to the following Transplant Center:

Harbor-UCLA Medical Center

Transplant Center

1000 West Carson Street

Torrance, CA 90509

Telephone Numbers:

(310) 222-2728 (Weekdays 8:00 a.m. – 4:30 p.m.)

(310) 222-2776 (For all other times)

(310) 533-4093 (Fax)

In addition to personnel requirements defined by federal or State law, or both, the following personnel requirements, as required by County, are to be followed by Contractor when providing services under this Agreement. Contractor agrees to the responsibilities defined below:

A. EVALUATION OF DONOR

Although, in a typical case, Contractor will make a preliminary inquiry as to the appropriateness of the donor and will order certain tests relating thereto, the Transplant Surgeon will have the sole and final responsibility to evaluate the results of any such tests and to make a final determination as to the acceptability of the donor organ.

B. RESPONSIBILITY FOR RECOVERED ORGANS

Contractor, by means of its staff and contracted recovery personnel, and pursuant to mutually agreed upon protocols and Transplant Hospital specifications, will be responsible for overseeing the arrangement and procedures of organ recovery. The Contractor staff is responsible for arranging recovery, labeling, packaging and transportation of the organs not taken by the Transplant Hospital at the time of recovery. The Transplant Hospital will have responsibility for implanting the organ or organs in the identified recipient(s). Contractor shall have no responsibility for the implantation of organs. The transplant physician/surgeon will inform the patient of all OPTN required information for every organ accepted. The Transplant Hospital must comply with OPTN and CMS regulations with regard to organ packaging and transportation.

3. RESPONSIBILITIES OF CONTRACTOR (OPO):

A. Contractor shall be responsible for two separate determinations of the donor's blood type, and if the recipient is known, that it has procedures to ensure that its staff compares the blood type of the donor with the blood type of the intended recipient, with verification by a second individual, and for the accompaniment of the documentation with the organ to the Transplant Hospital. Contractor shall document potential donor's record with all test results, including blood type before organ recovery.

1. Laboratory Services:

a. Contractor agrees to provide the business name, business address, telephone number, and contact person of each contracted laboratory which performs testing services on potential donors for Contractor to the Transplant Center to facilitate communication between Transplant Center and such laboratories.

- b. Contractor hereby represents that its contracted laboratories are contractually obligated to maintain all certifications under federal, state, or local statute or regulation which governs the operation of laboratories, and that the laboratory is further obligated to maintain in good standing its agreement with the Secretary of Health and Human Services for reimbursement of its histocompatibility services under Title XVIII of the Social Security Act.
 - c. Contractor shall provide County with all current copies of laboratory certifications, licenses, and registrations upon request.
- B. Contractor shall communicate promptly with the Transplant Hospital concerning personnel, policy, and procedure changes, especially with concern to the placement, packaging labeling and transport of organs.
- C. Contractor shall be responsible for the proper documentation about the recovered organ(s) being provided to the Transplant Surgeon, including blood type and identifying information. The packaging, labeling, handling and shipping of organs shall be according to OPTN policy.
- D. Contractor shall communicate with the Transplant Hospital by means of telephonic, electronic, UNet or facsimile communication, as appropriate, concerning any and all issues involved in organ offer, acceptance, status, recovery and transplantation.
- E. Contractor shall, through the OPO liaison and appropriate and identified hospital management personnel, promptly identify and report issues, complaints and concerns involving the donation and transplantation process to the Transplant Hospital, with the goal of prompt analysis, resolution and quality improvement.
- F. Contractor is responsible for ensuring the preliminary testing and typing of organs in accordance with OPTN policy 2.0.
- G. Contractor shall send completed documentation of donor information to the Transplant Hospital with the organ, including evaluation, medical social history and record of donor management, documentation of authorization, documentation of pronouncement of death, and documentation for determining organ quality, including donation after cardiac death.
- H. Contractor shall notify the Transplant Hospital immediately of any negative action against it from any accrediting body or from the OPTN, including but not limited to loss of membership.

- I. Contractor shall provide hospital specific organ donation data to Transplant Hospital at least quarterly.

4. RESPONSIBILITY OF THE TRANSPLANT HOSPITAL:

The Transplant Hospital shall retain professional and administrative responsibility for the services rendered. Transplant Hospital will:

- A. Respond to organ offers within the OPTN bylaws and if the Transplant Hospital fails to respond to an organ offer within the permitted time frame, the OPO may rescind the offer.
- B. Provide qualified and appropriately licensed and credentialed surgical recovery teams from its facility, and that it shall:
 1. Represent and warrant that, with respect to each Recovery Surgeon affiliated with the Transplant Hospital:
 - a. Each Recovery Surgeon has medical staff privileges at the Transplant Hospital to perform organ transplants;
 - b. The Transplant Hospital has queried the National Practitioners Data Bank concerning each Recovery Surgeon;
 - c. To the best of its knowledge, the Transplant Hospital is not aware of any CMS sanctions or pending sanctions against any Recovery Surgeon; and
 - d. Each Recovery Surgeon maintains malpractice insurance in minimum required amounts consistent with the Transplant Hospital's policies and applicable law.
 2. Ensure that all Recovery Surgeons, sent by the Transplant Hospital for organ recovery, are trained and competent to carry out the recovery. Notwithstanding this, Contractor reserves the right to restrict or revoke approval for a Recovery Surgeon to perform recoveries of donor organs if it determines, in accordance with its policy and applicable laws and regulations, that such Recovery Surgeon is not suitable.
 3. Provide a credentialing letter for all organ recovery personnel, in accordance with CMS requirements, prior to the surgeon participating in the recovery of any organ.
 - a. A "Credentialing Letter," with the Transplant Hospital's letterhead, must include but not be limited to:

- i. Surgeon's first and last name
 - ii. Surgeon's Medical license number (with expiration date)
 - iii. List of organs that are approved to be recovered
 - b. An updated letter of credentials provided to Contractor prior to the surgeon's medical license expiration.
4. Transplant Hospital will notify Contractor of additions and deletions to its transplant recovery team medical staff privileges, licensure, credentials or insurance within 24 hours of the change.
5. Make available in a timely manner a Recovery Surgeon to perform organ recovery of all kidneys and/or pancreata of donors at the Transplant Hospital; unless another Recovery Surgeon, acceptable to Contractor, has agreed to recover such organs.
- C. Have and use written protocols for the validation process of donor-recipient blood type and other vital data for the deceased organ recovery and organ recipient.
- D. Through its Transplant Surgeon, be responsible for ensuring the medical suitability of donor organs for transplantation into the intended recipient. The Transplant Hospital shall have the right to terminate its participation in any case (i.e. transplant operation) at any time, if the Transplant Hospital determines that the donated organ is not appropriate for its patient or if the intended patient is unsuitable. In the event the Transplant Hospital declines or terminates its participation in any transplant case, the Transplant Hospital shall not be liable to Contractor for any cost.
- E. Notify the OPO immediately of any negative action against it from any accrediting body or from the OPTN, including but not limited to loss of membership or CMS certification.
- F. Assist the OPO with QAPI activity, as appropriate, to maximize organ donation and transplantation.
- G. Transplant Hospital and Center will establish and provide to Contractor a policy related to the donor identification, recovery and organ utilization of DCD (donation after cardiac death) donors.
- H. Agree to adhere to standards of professional behavior:

Transplant Hospital understands and agrees that: Members of the recovery team participating in organ and tissue recovery activities within an OPO service area will treat all personnel in the donation process with professional courtesy and respect. Organ and tissue recovery personnel should conduct themselves in a manner that promotes an effective and productive setting particularly in the operating room, but also during the entire recovery process. Proper conduct avoids displays of anger, intimidation, ridicule and other abusive behavior. Each organ and tissue Recovery Surgeon, as head of their recovery team, must assume primary responsibility for preventing improper conduct such as harassment of personnel during the recovery process. Breaches of conduct will be addressed as follows:

1) In the case of observed unprofessional conduct, if directly addressing the surgeon or recovery team staff member does not resolve the problem, there is an obligation to report the misconduct to the Medical Director of the OPO or other appropriate authority as designated by the OPO. The Medical Director or OPO designee has the responsibility of assessing reported violations of the Code of Conduct engaging in personal communication with the surgeon or staff member in an appropriate and timely manner. If a personal communication does not resolve the offensive conduct, the OPO should bring the misconduct to the attention of the surgeon's Chief of Service or the staff member's supervisor.

2) The privilege of recovery responsibility on behalf of the OPO can be approved or revoked by the OPO depending on conduct. Accordingly, conduct deemed unprofessional may be subject to disciplinary action by the OPO. This disciplinary action could result in a request to the surgeon's Chief of Service that the offending surgeon's privileges to participate in organ and tissue recovery activities be revoked within the OPO service area. In the case of misconduct on the part of a recovery team staff member other than a surgeon, the request could be made to the staff member's supervisor. If the misconduct is not resolved by this procedural step, the OPO may refuse to permit the offending surgeon or staff member from participating in organ and tissue recovery activities within the OPO service area." (Source: The AOPO Code of Conduct, endorsed by the ASTS Council in January 2004).

I. Provide recipient outcome information, including graft function, within 10 days of transplantation to OPO.

J. Provide, at all times, OPO with a copy of current personnel contact information, and shall provide immediate notification to OPO of changes in key

personnel, including but not limited to transplant physicians, department management and administrative staff.

K. Provide notification to OPO concerning any inactivation and/or reactivation of transplantation services within 24 hours or as otherwise appropriate.

L. Communicate promptly with the OPO by means of UNet, telephonic, electronic, or facsimile communication, as appropriate concerning the acceptance or declination of any organ or organs offered by any OPO.

M. Communicate any adverse events that they may become aware of related to the donor, including but not limited to evidence of transmissible disease, concerns about the organ recovered, the process of recovery, the medical suitability of the donor, or any other factor which could negatively impact the morbidity or mortality of the recipient or other recipients of other organs or tissues from the same donor, utilizing the Contractor event reporting system.

N. Update the UNET data system in a timely manner with information concerning patient status.

O. Together with their surgeons, and in accordance with the OPTN Policy 3.0, be responsible for ensuring medical suitability of donor organs that have been allocated for transplantation into a potential recipient at the Transplant Hospital.

P. Assist with donor management and evaluation of donor upon request of the OPO.

Q. Appoint a qualified Transplant Surgeon as a member of the OPO advisory board to insure that clinical staff shall participate in Donation/Transplantation educational programs as may be made available by the OPO/Transplant hospital on at least an annual basis.

R. Through the OPO liaison and identified appropriate hospital management personnel, promptly identify and report issues, complaints and concerns involving the donation, recovery and transplantation process to the OPO, with the goal of prompt analysis, resolution and quality improvement.

5. PAYMENT:

a. The fee(s) paid by County for each organ accepted by County pursuant to this Agreement shall be as listed in Attachment I, Organ Transplant Procurement List, attached hereto and incorporated herein by reference.

b. Contractor agrees that the cost of any organ(s) listed on Attachment I shall be the Organ Acquisition Fee approved by CMS, the Medicare Fiscal Intermediary. Contractor shall provide Transplant Hospital with a copy of any revised charges approved and authorized by CMS. County will pay the new charge commencing on the effective date, retroactively, if necessary.

c. Contractor understands and agrees that the Organ Acquisition Fee, as authorized by CMS, is an all-inclusive fee for any and all services related to organ transplant procurement services. No other costs, charges, taxes, fees, or fines shall be billed or passed on to County.

d. County will provide payment of approved invoices within forty-five (45) days of receipt. Refer to subparagraph 3.4 of the Agreement.

Organ Transplant Procurement List

Organ Description

Organ Acquisition Fee (charge per organ)

Kidney

\$39,250*

*All-inclusive fee. Refer to Exhibit A, DOS, Paragraph 5.b, regarding payment for subsequent adjustments in the fee.

July 2011

H-UCLA Transplant Center